



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/761,599	01/20/2004	Gonzalo Fernandez	FA041	4273

47851 7590 01/26/2006

KEITH KLINE
THE KLINE LAW FIRM
161 LITTLE POND LANE
PALMYRA, VA 22963

EXAMINER

PRICE, CARL D

ART UNIT PAPER NUMBER

3749

DATE MAILED: 01/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/761,599	Applicant(s) FERNANDEZ ET AL.	
	Examiner CARL D. PRICE	Art Unit 3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Information Disclosure Statement.

The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. The drawing fails to represent or illustrate any means or element(s) associated with the merely schematically illustrated "gas thermostat" (claim 2) necessarily related thereto for determining, monitoring or sensing "the temperature in the oven". Also, a timer (claims 8 and 9) must be shown. These must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112, first paragraph

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 2-10 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for the general operation of the oven control, does not reasonably provide enablement for “a gas thermostat”. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make the invention commensurate in scope with these claims. More specifically, while the use of a “gas thermostat” is mentioned in the specification and schematically represented by reference character “2” in the drawings, it is not clear what, if any, means or elements of the merely mentioned “gas thermostat” necessarily act to permit the gas flow regulating means to respond to “the temperature in the oven”. Indeed, the drawing itself fails to represent or illustrate any means or element(s) associated with the merely schematically illustrated “gas thermostat 2” necessarily related thereto for determining, monitoring or sensing “the temperature in the oven”, which is also not shown.

In regard to claim 8, there is no proper antecedent basis for “the maximum preset cooking time”.

Claim Rejections - 35 USC § 112, second paragraph

The following is a quotation of the of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, in the last paragraph of claim 1, it is unclear what means or aspect of the temperature regulated "gas flow regulating means" would necessarily enable the electronic controller such that it "**does not need** to close the gas valve each time that the temperature in the oven is greater than the selected temperature and **does not need** to open the gas valve and act on the ignition module each time that the temperature in the oven is below the selected temperature". Also, regarding claim 1, the word "means" is preceded by the words "oven operating" (line 3), "flame sensor" (line 5) and "gas flow regulating" (line 18) in an attempt to use a "means" clause to recite a claim element as a means for performing a specified function. However, since any function implied by these words preceding "means" would necessarily be redundant with the function recited after the word "means" it is unclear what meaning applicant intends to assign the phrase "oven operating" (line 3), "flame sensor" (line 5) and "gas flow regulating" (line 18), since the claim appears to be otherwise written in a form permitted by 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim: Rejected under 35 U.S.C. 102(b)

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by US005655900A (Cacciatore).

US005655900A (Cacciatore) shows and discloses a gas oven control and safety system including:

- oven operating means (24) for a user to regulate the operation of the oven;
- flame sensor means (22) for detecting the presence of a flame in an oven burner;
- a gas valve (16) for regulating the degree of opening or closing the supply of gas to the burner;
- an ignition module (20) for igniting a flame at the burner;
- an electronic controller (12) which receives a first signal from the operating means representative of the user regulation, and a second signal from the flame sensor means representative of the existence of a flame, the electronic controller acting, in accordance with the first and second signals, on the gas valve and on the ignition module; and
- gas flow regulating means (12, 16) that regulate the gas outflow to the burner in accordance with the temperature in the oven and a selected temperature, so that the electronic controller does not need to close the gas valve each time that the temperature in the oven is greater than the selected temperature and does not need to open the gas valve and act on the ignition module each time that the temperature in the oven is below the selected temperature.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any

Art Unit: 3749

evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims: Rejected under 35 U.S.C. 103(a)

Claims **2-12** are rejected under 35 U.S.C. 103(a) as being unpatentable over **US005655900A (Cacciatore)** in view of **JP55-3576**.

US005655900A (Cacciatore) shows and discloses the invention substantially as set forth in the claims with possible exception to:

- the gas flow regulating means comprising a gas thermostat associated with an operating means control knob acting on a switch to regulate the gas thermostat; and
- a timer wherein the user sets the cooking time.

JP55-3576 teaches, from applicant's same gas burner oven temperature control system field of endeavor, gas flow regulating means comprising a gas filled thermostat (11) associated with an operating means control knob (16) acting on a switch (9) to regulate the gas filled thermostat.

In regard to claims **2-12**, for the purpose of providing a manual means for operating the oven control, it would have been obvious to a person having ordinary skill in the art to modify **US005655900A (Cacciatore)** to include a gas flow regulating means comprising a gas filled thermostat associated with an operating means control knob acting on a switch to regulate the gas filled thermostat, in view of the teaching of **JP55-3576**. In regard to claims 8 and 9, Official Notice is taken that it is well known to provide gas burner cooking appliances with timers associated with a control knob wherein the cooking time is set according to initial operation of the cooker (See for example, JP07-275132 and JP60-235918).

Conclusion

See the attached USPTO form 892 for prior art made of record and not relied upon which is considered pertinent to applicant's disclosure.

USPTO CUSTOMER CONTACT INFORMATION

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CARL D. PRICE whose telephone number is (571) 272-4880. The examiner can normally be reached on Monday through Friday between 6:30am-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ehud Gartenberg can be reached on (571) 272-4828. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



CARL D. PRICE
Primary Examiner
Art Unit 3749